

Can the Right to a healthy environment contribute to achieve the right to access water? The case of Colombia

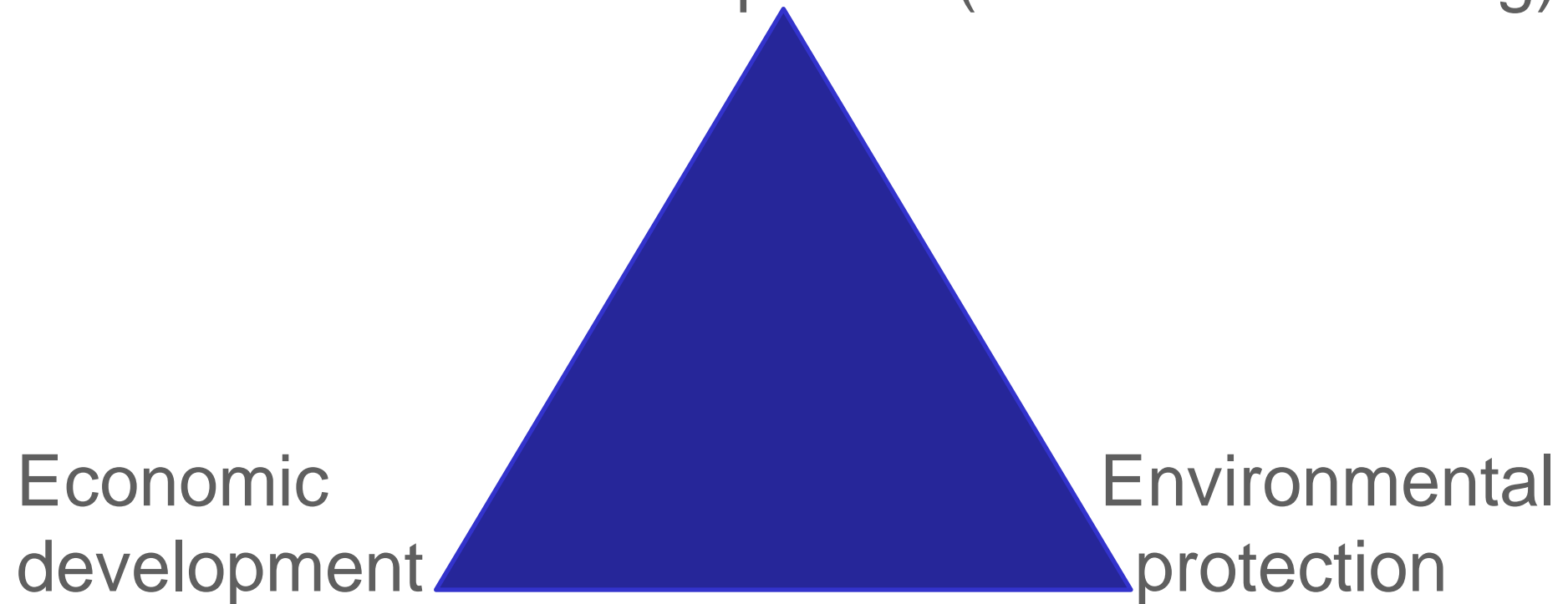
Jimena Murillo Chávarro

Overview

1. Sustainable development and water.
2. Emerging HR to access safe water.
3. HR to a healthy environment
4. The case of Colombia
5. Conclusions.

Sustainable development

Social development (human well-being)



Sustainable development

Human well-being (human Rights)


R. to a healthy
environment

Economic
development

Environmental
protection

Human well-being

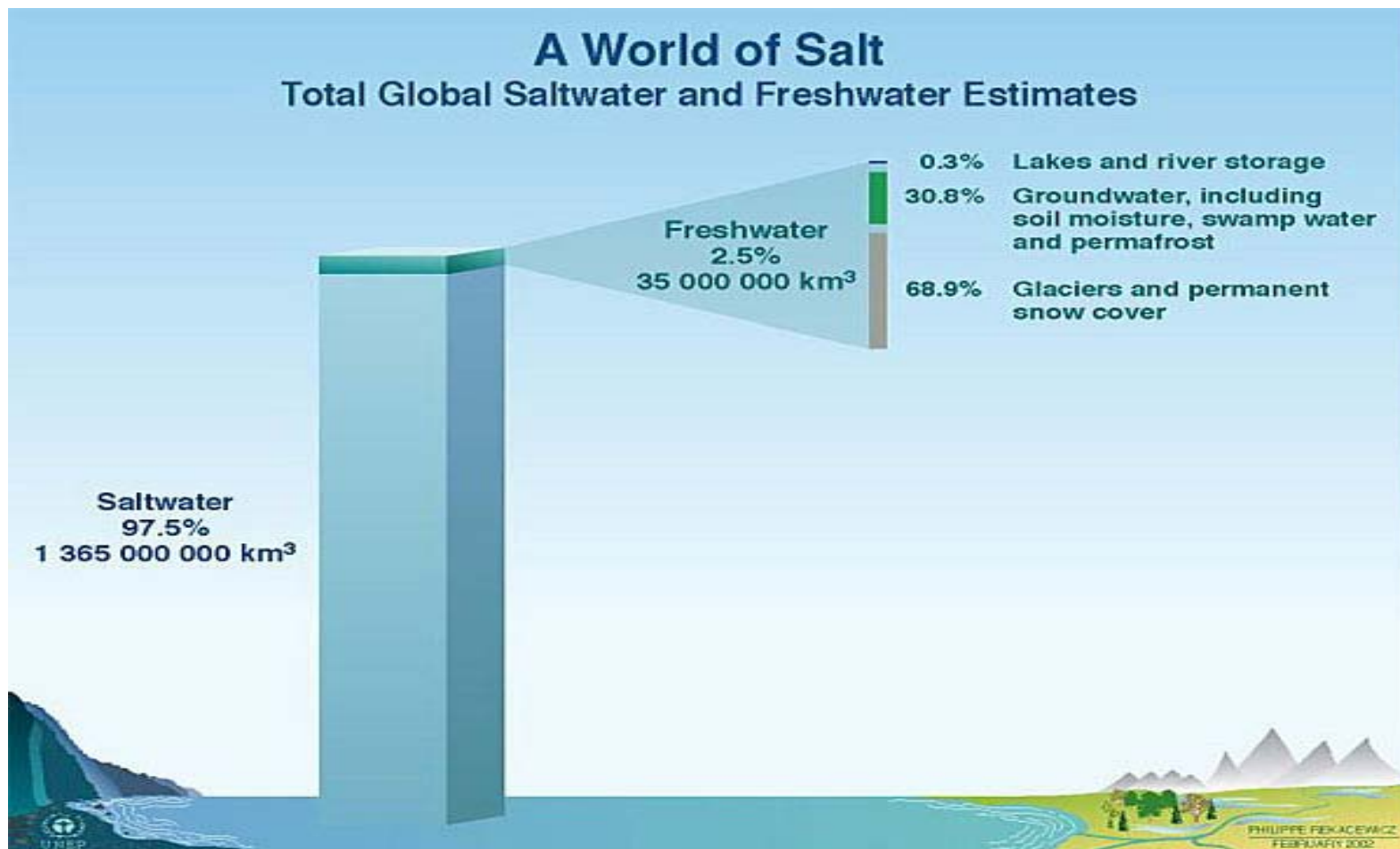
-Access to drinking water commitment  of UNCSD.

* Agenda 21: The general objective  to make certain that adequate supplies of water of good quality are maintained for the entire population of this planet”.

* MDG: halve by 2015 the proportion of people without access to drinking water.

* Johannesburg Action Plan





WATER

- Common denominator in all challenges of sustainable development:
 - Energy, industry
 - Food
 - Poverty eradication
 - Human consumption



Emerging R. to access safe water

- Everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.



- Water must be free from micro-organisms, chemical substance and radiological hazards that constitute a threat to a person's health.

Emerging R. to access safe water

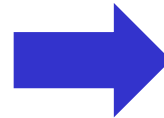
- Water resources must be protected to guarantee this rights, for instance from pollution and overexploitation.



Emerging R. to access safe water.

-Problem:

R. to access water

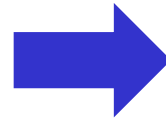


No universally
recognized

Emerging R. to access safe water.

-Problem:

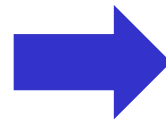
R. to access water



No universally
recognized

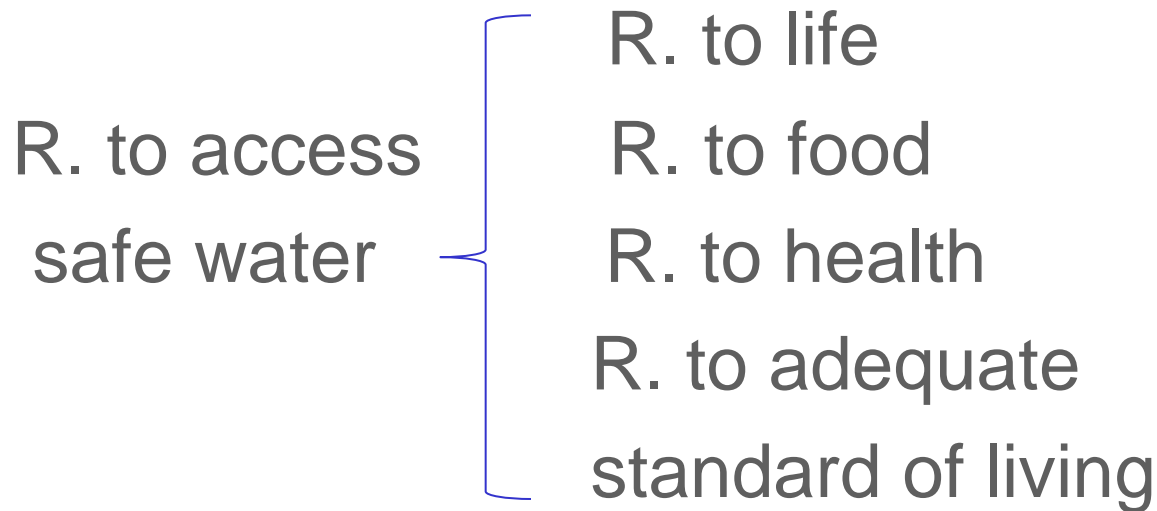
-Solution:

Use existing human Rs.

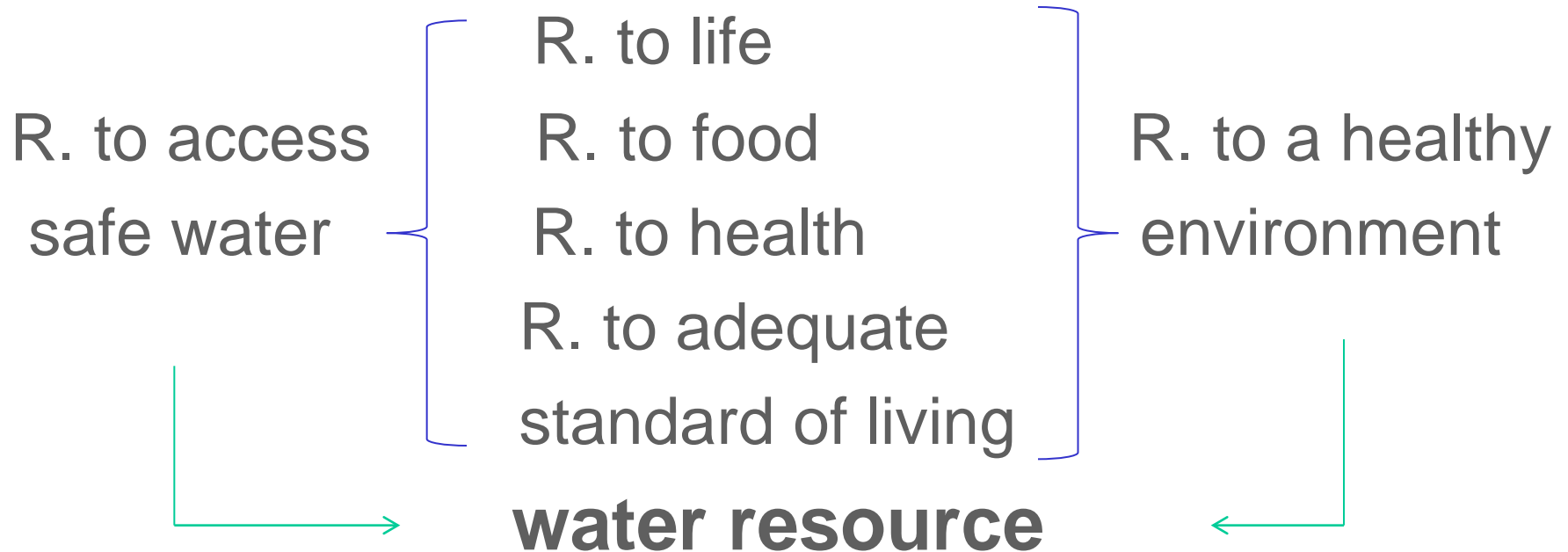


to protect access
to safe water

Human rights are interconnected



Human rights are interconnected



Right to a healthy environment

- To live in a environment of a quality that permits a life of dignity and well-being
- This human right Protects:
 - Soil
 - Air
 - **Water**
 - avoids noise and visual contamination.



Right to a healthy environment.

- Resolution 45/94 UNGA: “ *all individuals are entitled to live in an environment adequate for their health and well-being*”.
- Regional recognition, e.g San Salvador protocol in the Americas.
- Enshrined in National Constitutions.

WHAT IS THE SITUATION IN COLOMBIA?



The Case of Colombia.



Constitutional Human Rights

- Fundamental Rights
(R. to life)
- Collective Rights
(R. to a healthy environment)
- Link between fundamental R.
and R. healthy environment
(*rule of connection*)

Judicial Action

- Tutela action (fast and
priority mechanism.
Constitutional Court.)
- Popular action (group
action/Council of State)
- Tutela action

The case of Colombia

- Right to a healthy environment  explicit in the Constitution
- Right to access safe water  No explicitly recognised.



Popular action cases

1. Ombudsman Vs Neiva Municipality & others (appeal before Council of State (CS) 2001).

- Polluted water was distributed through the water supply directly to homes of the inhabitants of Fortalecillas, without any treatment.
- Thus, water provided to inhabitants was **Not suitable** for human consumption.
- CS granted protection of R. healthy environment and access to public services.
- CS order the municipality take necessary measure to guarantee potable water and treatment to sewage that were contaminating the water & preserve biodiversity of river.

Popular action cases

2. Diana pineda Vs Corporacion Autonoma regional del valle del Cauca CVC (Appeal before CS)

- Due to the omission of some works the sewage system of the city was discharging waste into the San Jose River, polluting the water & the atmosphere.
- San Jose River flows into another river. The water of this river was used as source for the water network supply for another village.

Popular action cases

-Other discharges in the river were also coming from houses located along the river.

-CS granted R. healthy environment. It order to clean the river, invest resources in potable water and sanitation and start educational programmes.



Tutela action cases

1. Jorge Gomez Vs Mayor of Versailles & others.

- Plaintiff alleged inhabitants of Versailles municipality were affected by the supply of polluted water to homes.
- Physical, chemical, bacteriological apt for human consumption.
- The Court says *“the supply of polluted water that is not acceptable for human consumptions constitute a risk and a violation of the fundamental right to life, dignity, health and a healthy environment”*.



Tutela action cases.

- Without water there is no life. Therefore, the residential public service of water supply aims at meeting the basic needs of people, which request the provision of *safe* water for human consumption
- Drinking water constitutes a fundamental right that is part of the core elements of the right to a dignified life, when intended for direct human consumption(T-888 of 2008, Constitutional Court.

Nicolas Contreras Hernandez Vs Proactiva Aguas de Monteria S.A E.S.P.0

Conclusions

- Water contamination affects R. healthy environment and R. to access water.
- *R. healthy environment (popular action or tutela) **contributes** in the protection of water resources & also in the achievement of the R. to access water.*
- Constitutional Court acknowledges R. to access water is part of the core elements of other HR.
- Water supply to homes must be safe for human consumption.



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Thank you for your attention!

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